Dec 15, Affirmed with Costs

SUPREME COURT OF THE UNITED STATES.

No. ~~309~~. ~~447~~. 70. 35. ~~48~~. ~~77~~

~~46~~. ~~46~~.

HENRY STURDY AND AL., PL'FFS,

vs.

BENJAMIN J. JACOWAY AND SAMUEL DICKENS.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF ARKANSAS.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

-12-

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ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF ARKANSAS.

The United States of America, eastern district of Arkansas.

In the circuit court of the United States for the eastern district of Arkansas, at the April term thereof, A. D. 1859.

Pleas had on the 5th day of May, A. D. 1859, before the honorable Peter V. Daniel, associate justice of the Supreme Court of the United States, assigned to hold the circuit court for the eastern district of Arkansas, and the honorable Daniel Ringo, district judge.

HENRY STURDY, and ELIZABETH STURDY, his wife, JOHN G. WILSON, and FRANKLIN F. WILSON, and LUNSFORD O. WILSON, EUGENIA WILSON, and CHRISTOPHER C. WILSON, minors, by WILLIAM WALKER, their next friend, plaintiffs,
vs.
BENJAMIN J. JACOWAY & SAMUEL DICKENS, defendants.
} In ejectment.

Declaration.

In the circuit court of the United States for the eastern district of Arkansas, to the April term, A. D. 1859.

Henry Sturdy, and Elizabeth, his wife, John G. Wilson and Franklin F. Wilson, who are citizens of the State of Missouri, by Walker and Green, their attorneys, and Lunsford O. Wilson, Eugenia Wilson, and Christopher C. Wilson, who are infants, under the age of twenty-one years, and citizens of the same State, by

William Walker, their next friend, complain of Benjamin J. Jacoway and Samuel Dickens, who are citizens of the State of Arkansas:

For that whereas the said Henry Sturdy, and Elizabeth, his wife, John G. Wilson, Franklin F. Wilson, Lunsford O. Wilson, Eugenia Wilson, and Christopher C. Wilson, who are citizens of the State of Missouri, were heretofore, to wit, on the first day of January, A. D. eighteen hundred and fifty, lawfully entitled to the possession of all those certain tracts or parcels of land situate, lying, and being in the county of Yell, in the said eastern district, known and designated in and by the surveys of the public lands of the United States, as being the southeast fractional quarter of section four, the south fractional half of section five, the southeast quarter of section two, the east half of section eight, the southwest fractional quarter of section twenty-three, and the west fractional half of section nine, all in township six, parts of range twenty west, containing in all twelve hundred and thirty-four acres and twenty-three hundredths of an acre, and being so entitled to the possession thereof, the said defendants afterwards, on the day and year aforesaid, entered into and upon the premises aforesaid, and unlawfully withholds from them, the said plaintiffs, the possession thereof, to their damage of $10,000; and therefore they sue.

WALKER & GREEN,
Atto's for the Adult Plaintiffs.
WILLIAM WALKER,
Next Friend of the Infant Plaintiffs.

I, William Walker, of the city of Van Buren, and State of Arkansas, do hereby consent to be appointed next friend to the infant plaintiffs in the foregoing declaration named.

Dated at Van Buren, this 12th day of May, A. D. 1858.

W. WALKER.

On the application of the infant plaintiffs in the foregoing declaration named, and on reading the foregoing written consent of William Walker to be appointed their next friend, it is hereby ordered that the said William Walker be, and he is hereby appointed the next friend of the said infant plaintiffs, to commence and prosecute an action of ejectment in conjunction with adult plaintiffs in said declaration named, in the U. S. ct. ct. for the E. d't of Arks., against Benjamin J. Jacoway and Samuel Dickens, for the recovery of certain lands situate in Yell county.

Given under my hand at Van Buren, this 12th day of May, A. D. 1858.

DANIEL RINGO,
U. S. Judge for Arkansas Districts.

We, William Walker and Joseph J. Green, of the county of

Crawford, and State of Arkansas, do hereby acknowledge ourselves bound for the payment of all the costs which may accrue in this suit, and for the payment of which the plaintiffs shall be in anywise responsible.

Witness our hands and seals, this 12th day of May, A. D. 1858.

W. WALKER. [SEAL.]
[SEAL.]

Filed, and summons issued, 20th May, 1858.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

On the 14th of April, 1859, the following order was entered of record, to wit:

HENRY STURDY et al., plaintiffs,
vs.
B. J. JACOWAY & DICKENS, defendants. } Ejectment.

This day come the said defendants, by their attorneys, and file their two pleas herein.

2d plea of defendants.

And the said defendant, Jacoway, by attorney, comes and defends, &c., and says that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says, that heretofore, to wit, on the 27th day of December, A. D. 1853, in the circuit court of the State of Arkansas, in and for the county of Yell, to wit, at the district aforesaid, and returnable to the March term thereof in that year, these same plaintiffs instituted their action of ejectment against this defendant for the recovery of the identical same lands mentioned and described in their declaration in this behalf, to which action this defendant appealed, and said circuit court there had by law jurisdiction over the said parties thereto, and the subject matter of that litigation; and in and to which action this defendant pleaded not guilty, and said plaintiffs joined issue thereto, and such further proceedings were had in that suit, that afterwards, to wit, at and during the March term of said circuit court there, in the year 1856, a jury came, and were duly empannelled and sworn to try said issue, and who, after hearing the evidence adduced, duly returned into court their verdict in favor of this defendant: that he was not guilty as charged in the declaration in that behalf; whereupon this defendant had judgment, and it was considered by the said court there, that he go hence and recover of said plaintiffs all his costs in that behalf expended; and pending the said trial, the said plaintiffs took and reserved sundry exceptions to certain rulings and decisions of said circuit court there, whereby it appears, and as this defendant avers the truth to be, that on said trial the said plaintiffs as well as this defendant claimed title to and own-

ership of said lands, and adduced evidences in support thereof respectively; and the entire title in fee, and the claim and title as well of the said plaintiffs as of this defendant was presented, heard, and passed upon by said jury, under the instructions and direction of the court there, and was finally adjudicated and determined by said court there; and its consideration and judgment aforesaid, and from which judgment said plaintiffs afterwards, and during the same March term of said circuit court, prayed an appeal to the supreme court of said State, which was granted, as in and by the record of said suit remaining before the said circuit court, and an exemplification whereof is now to the court here shown, will fully appear; and which appeal said plaintiffs prosecuted in and before said supreme court, and such proceedings were had therein, that afterwards, to wit, at and during the January term, A. D. 1858, of said supreme court, the said cause upon appeal, and upon the errors assigned and joined therein, came on to be heard, and was argued by counsel, whereupon said supreme court was of opinion, and accordingly considered and adjudged, that there was no error in the record and proceedings had in said cause in said circuit court, and brought there on said appeal, and that said judgment of said circuit court be, and the same was in all things, affirmed with costs, as in and by the record thereof remaining before the said supreme court of said State, an exemplification whereof is now to the court here shown, will fully appear; and this defendant for plea, further says that his co-defendant, Dickens, holds title to a portion in severalty of said lands by mesne conveyance from this defendant, of, by, and under the identical same right and title so as aforesaid adjudged to and in favor of this defendant, and no other, all which this defendant is ready to verify, &c.; wherefore, he prays judgment, &c.

WATKINS, *Atto'y for Def't.*

Filed 14th April, 1859.

WM. FIELD, *Clerk.*
By R. SEARCY, *D. C.*

The following order on the record was had on the 4th of May, A. D. 1859, to wit:

HENRY STURDY et al., plaintiffs,
vs.
B. J. JACOWAY & DICKENS, defendants. } Ejectment.

This day come the said plaintiffs, and file their motion to have this cause reinstated upon the docket, which motion was verified by the affidavit of Samuel W. Williams, Esq., one of their attorneys, and the court being now well and sufficiently advised of and concerning said motion, doth sustain the same, and order that said cause be reinstated on the docket, to be proceeded with to

final hearing; whereupon, said plaintiffs file their similiter to said defendants' first plea, and their demurrer to the second plea, and the said defendants enter their jointer to said demurrer, in short, by consent, upon the record; whereupon, the demurrer to said defendants' second plea was argued by counsel and submitted to the court, and the court being divided in opinion as to certain legal questions arising upon the said demurrer, the same are ordered to be reduced to form, and certified to the Supreme Court of the United States for their opinion and decision thereof by said court.

Question arising on said demurrer.

SAME
vs.
SAME

This was an action of ejectment, to which the defendant, Jacoway, pleaded a first and second plea, to which second plea the plaintiffs' demurrer, to which there was a joinder, and the questions of law arising on said demurrer were argued and submitted to the court, and which declaration, second plea, and record of entry of the demurrer thereto, and joinder remaining on file and of record before the court here, and are ordered to form a part of this certification, copies whereof will be attached hereto; and on consideration of the matters of law arising on said demurrer to said second plea, the opinion of the judges are opposed.

Whereupon, on motion of George C. Watkins, defendants' counsel, and Samuel W. Williams, plaintiffs' counsel, it is ordered that the points on which the judges are divided in opinion be stated, and certified under the seal of the court, to the Supreme Court of the United States to be finally decided, and which questions are now here stated, as follows, viz:

1st. Is said plea good in law as a bar to this action?

2nd. Is a final judgment pronounced in an action of ejectment, where the claim of title in fee simple absolute by the parties respectively, was the sole subject of controversy instituted and prosecuted, under and according to the forms and in the manner precribed by the Statute Laws of the State of Arkansas, a valid, legal bar to a like action, subsequently instituted between the same parties, for the same lands or premises, involving the same identical title and rights to the possession of such lands or premises, and none other?

The United States of America, eastern district of Arkansas.

I, Archibald H. Rutherford, clerk of the circuit court of the United States within and for the eastern district of Arkansas, do hereby certify that the above and foregoing nine and one-half pages contain a full, true, and correct transcript of the record and

proceedings of the cause mentioned in the caption thereof, embraced in the order of the court, directing and ordering said cause to be certified to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, at Little Rock, Arkansas, this 10th day of November, 1859.

[SEAL.]

A. H. RUTHERFORD, *Clerk.*

IN THE

Supreme Court of the United States.

AT DECEMBER TERM, 1860.

STURDY ET ALS. VS. JACOWAY ET AL.

ON CERTIFICATE OF DIVISION FROM THE EASTERN DISTRICT OF ARKANSAS.

ARGUMENT FOR DEFENDANT.

IN THE

Supreme Court of the U. States.

DECEMBER TERM, 1860.

Sturdy et als. vs. Jacoway et al.

ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

ARGUMENT ON BEHALF OF DEFENDANTS.

In the year 1845, James Wilson departed this life, in the State of Missouri, (where he resided) intestate, leaving the Plaintiffs Henry Sturdy and Elizabeth, his wife, John G. Wilson, Franklin F. Wilson, Lunsford O. Wilson, Eugenia Wilson and Christopher C. Wilson, his heirs at law. Besides the property left by the intestate in Missouri, he was the owner at the time of his death, of a tract of unimproved land described in the declaration, containing about twelve hundred and thirty-four acres, situate in Yell county, in the State of Arkansas. Administration of the Estate of the intestate was granted to one Lemuel B. Harrell in Missouri, and afterwards, ancillary administration of his Estate in Arkansas, was granted to one Phineas H. White. By authority of the Statutes of Arkansas, in such case provided, [*Gould's Digest of Ark. Title* ADMINISTRATION, Sec. 163, 186.] White, the Administrator in Arkansas, applied for and obtained an order of the Probate Court of Yell county, for the sale of the land in question, for the payment of debts, and because the lands being wild or unimproved, and a constant source of expenditure to meet taxes, it was deemed to the best interest of the Estate to sell them in preference to property in Missouri. The land was duly appraised and being offered at public sale in 1849, was purchased for a fraction over two-thirds of its appraised value by the Defen-

dant Jacoway. The sale was made by Harrell, the principal Administrator, from Missouri, who came to Arkansas in person, to conduct the sale, and acted under a power of Attorney from White the ancillary Administrator in Arkansas, who made a report of the proceedings to the Probate Court of Yell county, where the same were in all things approved. White as Administrator executed the usual deed, for the land, to the purchaser Jacoway, and he entered into possession of the same.

In December, 1853, these Plaintiffs instituted their action of ejectment in the Yell Circuit Court, against Jacoway for the recovery of the lands in question. The cause was tried at March Term, 1856. The title of the Plaintiffs being established by proof, the Defendant relied upon his purchase of the land, at Administrator's sale, by virtue of the order of the Probate Court; and the question was as to the regularity and legality of these proceedings. It was a contest about the ownership of the land, and the whole merits of the title was fully gone into, passed upon and adjudicated. Judgment was rendered in favor of the Defendant, and the Plaintiffs upon their various exceptions reserved, appealed to the Supreme Court of Arkansas, where the cause came on to be heard, and at the January Term, 1858, the judgment of the Yell Circuit Court was in all things affirmed.

Such, in brief, is the judicial history of this case, as will more fully appear by reference to the report of it in *Sturdy et als. vs. Jacoway*, 19 *Arks.*, 499.

It may be safely assumed, that no decision was ever pronounced by the Supreme Court of Arkansas, more important as a law of property, than the one just referred to. The entire property of the country passes through a course of testacy or of administration, at least once in every thirty years. By the constitution and laws of that State, the Probate Court in each county, is the peculiar tribunal having cognizance and jurisdiction over the Estates of deceased persons, minors, and insane persons, and the control of all executors, administrators and guardians; and it may order the sale of real estate, not only for the payment of debts, but for distribution, or for the conversion of land into money, whenever it may appear to be for the best interest of those interested in the

Estate, that it should be made to yield an income; and thus in a double sense, obviate the public as well as private evils incident to long minorities. Those Courts, though limited and inferior in grade, have a wide range of jurisdiction, in its nature equitable, and as all persons interested in the subject matter are of necessity before the Court of Probate, either actually or constructively, its orders and judgments are in the nature of proceedings *in rem*. Considering the vast number of titles, and value of property thus acquired and held, the rule of decision to be furnished, was a subject of momentous consequence. The Supreme Court of Arkansas in that case established the law to be, that every presumption is to be indulged in favor of the orders and judgments of a Probate Court, as of a Court of general jurisdiction—— seeing that all the Courts in America are but statutory and more or less limited as to jurisdiction—and that especially in a case where no fraud was imputed, its sentence or judgment not appealed from, or avoided by direct suit for that purpose, could never be collaterally impeached or called in question, for any supposed error or irregularity in the proceedings. Such a decision was eminently proper for the protection of those, who, not knowing, or not capable of judging, of any supposed irregularity, had purchased and paid for land sold by order of the Probate Court, and upon which they may have proceeded to make extensive and valuable imarovements. A contrary decision would have struck a fatal blow d the interests of all creditors, distributees, minors or others interested in Estates, because whenever confidence in titles acquired at such sales, always made without warranty, becomes shaken, the property exposed to sale could only find purchasers at a ruinous sacrifice.

It cannot be known or asserted here, that the greatly enhanced value of this land, in consequence of improvements made by the Defendant, offered a temptation for the Plaintiffs to try the chances of further litigation in another tribunal, deriving its jurisdiction from the accident of citizenship. So it is, that in May, 1858, they instituted this action of ejectment in the Circuit Court of the United States, for the Eastern District of Arkansas, against the Defendant Jacoway, and Dickens holding under him, for the

recovery of the same land which had been adjudged to him by the State Courts.

The Defendant in one of the pleas to this action, set up the former suit and recovery, and that the whole merits of the title were there involved, and were actually presented and adjudicated, and that the right and title here sought to be drawn in question is the identical same right and title adjudicated to him in the former suit and no other. Upon demurrer to this plea the judges of the Court were not agreed, and the case comes here upon their certificate of division.

If this action had been brought again in the Yell Circuit Court, the only question would be whether by law and usage in Arkansas, a second action of ejectment could be maintained by and against the same parties or their privies, for the recovery of the same land, involving the same title which had been presented, passed upon and adjudicated in the former suit. But as the second action is brought in a Federal tribunal, it will be for this Court to consider also, how far it will tolerate a manifest attempt to review and reverse in another jurisdiction, the solemn decision of the Supreme Court of Arkansas, and by the conflict hoped for, establish one law of property for non-residents, and another law of property for residents of that State.

Jurisdiction over the soil included within the territorial limits of a State, and the power to declare the laws according to which titles to land shall be acquired, held and transmitted, may be regarded as the essential attribute of sovereignty. Of course, the law of Arkansas should furnish the rule of decision in this Court. No instance has ever been known in that State, of a second action of ejectment being brought, where the title was in issue, and had been adjudicated in the former suit. On such a question, the opinion of His Honor, the District Judge, formerly Chief Justice of the Supreme Court, and whose name as a lawyer and Judge has been identified with the Judiciary of Arkansas for more than thirty years, may well be worthy of respect. It remains to consider some of the reasons why such is, and ought to be, the law.

At the common law, the judgment in a real action was final and conclusive; always so in a writ of right, and so also as be-

tween real actions of the same grade. Such was the law in England, having its foundations deeply imbedded in the feudal system, which guarded with jealous prohibition against the alienation of reality or its liability for debt. The action of ejectment was a later invention, with the aid of legal fictions, designed to afford a cheaper and more expeditious remedy for trying the right to the possession of land, thus drawing in question and incidentally involving the title. The reasons why a suitor might bring a second ejectment were:

Because the judgment in ejectment confers no title to the freehold upon the party in whose favor it is given, and consequently is not evidence of title in a subsequent action, even between the same parties. And because, as a different demise might be stated in every new action, it never could appear judicially to the Court that the second ejectment is brought for the same cause of action as the first. And because the structure of the record rendered it impossible to plead a former recovery in bar of a second ejectment; for the plaintiff in the suit is only a *fictitious person*, and as the demise, term, &c., may be laid many different ways, it never could be made to appear that the second ejectment is brought upon the same title as the first.

There, the action of ejectment was the summary remedy for the recovery of the mere possession, and determined nothing more. The tenant might well recover as against his landlord, who, at the expiration of the term, could resort to the same remedy as against the tenant holding over. There, the proceeding of forceable entry was criminal in its nature, being punishable as a breach of the public peace and good order of society.

But in Arkansas, the policy of her legislation has been to remove all restraints upon the alienation of reality, by sales, voluntary, or forced for debt or taxes, and even to the abrogation of the law of maintainance, which forbade the alienation of land adversely held. Real actions are altogether unknown. The Writ of Right has no more place in her jurisprudence than Wager of Battel or process of Outlawry. The action of ejectment is the only mode provided for trying the title to land, and is of necessity a substitute for the common law real actions. True, it may

be brought in cases whether the Plaintiff only claims or may be entitled to recover the temporary possession. But the Statute distinguishes between the two classes of cases, and expressly provides for adjudication upon the merits of the title where that is in controversy. The action is required to be brought directly by, and in the real names of the parties claiming the land. To entitle the Plaintiff to recover, it is sufficient for him to show, that at the time of the commencement of the action, the Defendant (in person or by his tenant) "was in possession of the premises claimed, " *and that the Plaintiff had title thereto, or had the right to the* " *possession thereof.*" Provision is made for cases where the Plaintiff's mere right to the possession, if temporary, may expire after suit and before trial. But unless the Plaintiff *claims title* to the land, he cannot maintain ejectment, if he or those under whom he claims, have been five years out of possession. *Goulds' Digest.* Title EJECTMENT. Sections 1—22.

And while the action of ejectment is the only mode provided in Arkansas for trying the title to land, another more expeditious and summary remedy, is afforded, and usually resorted to, for the recovery of the mere possession, where that is the only matter in controversy. By Statute, and the decisions under it, the proceeding of forceable entry is made to all intents and purposes a civil remedy, constituting a distinct form of action, in which all the proceedings are regulated by law. It applies to all cases where one man enters upon the land of another, with force, either actual or constructive, and though the premises be unoccupied. And by the same Statute, the remedy is greatly extended and enlarged, so as to embrace all cases where tenants hold over after the expiration of the term for which the premises may have been let, and all controversies about the mere possession liable to arise between landlord and tenant. *Gould's Digest.* Title FORCIBLE ENTRY AND DETAINER. Sec. 1 to 24. The object of the Statute is to restore the temporary possession, and Section 19 declares that the title shall *not* be adjudicated upon, or given in evidence, except so far as it may be necessary to show the right to the possession and the extent thereof. And yet more significant in this connection, are the 21st and 23d Sections of the Statute, which pro-

vide that nothing contained in the Act, shall bar or preclude the party aggrieved from bringing his action of trespass or ejectment against the party offending—and that while the Defendant in Forceable Entry or unlawful detainer shall not bring a cross action, of that nature, yet he is at liberty to bring his action of ejectment for the same premises, and may even do so during the pendency of that summary remedy.

Considering then the state of the law, and contrasting the two systems, it would seem that none of the reasons why a second action of ejectment may be brought, because according to the common law, the judgment is not conclusive, can have any application to the state of the law in Arkansas; but on the contrary that all of the reasons why a judgment in ejectment is and ought to be conclusive, as a judgment in a real action at the common law, do apply. The only loop to hang a doubt on consists in this: That the Arkansas Statute concerning Ejectment contemplates that the action may be brought in one class of cases, where the Plaintiff does not claim title but claims, or only succeeds in showing at the trial, a right to the possession. It is conceded that in such cases, the judgment in Ejectment cannot be conclusive of the title or right of property. But any such doubt is obviated in this case, because the plea shows, that in the former trial in the Yell Circuit Court, the right of property was the subject of controversy, and that both parties Plaintiff and Defendant relied upon their respective titles, which were fully considered, passed upon and adjudicated.

There is nothing in the due administration of the law, more proper to be borne in mind, than the maxim, interwoven with the law itself, and which as a science professes to be the perfection of reason—that as the reason of the law changes the law also changes. It is needless to multiply illustrations. Every lawyer and judge of experience, in this transition age of the law, can readily call to mind scores of instances, in which rules of decision have been abrogated or modified, by constitutional provisions or statutory enactments varying the common law, by political considerations, by the advancement and progress of society, the inventions of genius and the discoveries of science. Common law terms are re-

tained, as alchemy furnished the nomenclature of chemistry; but the great body of the old common law is obsolete even in England, while in America, there are but few of its fundamental principles that have not undergone some modification, by disuse or change.

But if there is any principle of law which remains fixed and established by the wisdom of ages and the prolonged observation of every judge, it is the doctrine of *the Dutchess of Kingston's case*, that the judgment of a Court of concurrent jurisdiction, upon a matter, is in pleading a bar, in evidence conclusive, in another Court, between the same parties and upon the same matter. Public policy requires that there should be an end of litigation, and the tendency of later decisions is to avoid all circuity of action.

The rule is, that "When a matter has been once adjudicated " by a Court of competent jurisdiction, it shall not again be drawn " in question; nor will parties be permitted again to litigate what " they once had an opportunity of litigating, in the course of a " judicial proceeding; but whatever might properly have been " put in issue in that proceeding, shall be concluded to have been " put in issue and determined." *McDowell vs. McDowell*, *Bailey Eq. Rep.* 324.

In *LeGuen vs. Governeur and Kimble*, 1 John. Cases 502, the Court say, "The general rule is intended to prevent litigation, " and to preserve peace; and were it otherwise, men would never " know when they might repose in security on the decisions of " Courts of justice; and judgments solemnly and deliberately " given might cease to be revered, as being no longer the end of " controversy and the evidence of right."

To the like effect see 1 *Greenleaf on Ev. Sec.* 531. *Biscoe vs. Tucker*, 14 *Ark.*, 523.

If there is any logic in first principles, it is difficult to escape the conclusion, that according to the law of Arkansas, a judgment in Ejectment is conclusive of the title, where the title is in issue. All the reasons for finality of judgments in other cases, apply to that action, as there regulated by Statute; while on the other hand, none of the reasons assigned why a judgment in Ejectment as at the common law, is not final, do exist and can have no application whatever. *Swift's System, vol. 2, p. 69; Swift's Digest, vol. 1, p. 651.*

There is one other aspect, in which this case remains to be considered.

Let it be supposed, that these Plaintiffs (who being citizens of Missouri, had the right to do so) had brought their former suit in the Circuit Court of the United States for the Eastern District of Arkansas; that the trial had been had there, upon the whole merits of the opposing titles, and judgment rendered in favor of the Defendant; that the Plaintiffs had prosecuted their writ of error to this Court, and that such judgment had been here re-examined and affirmed; that the Plaintiffs not content with the opinion and decision of this Court, had brought a new action in the Circuit Court of Yell county in Arkansas, for the same property, upon the same title and against the same Defendant.

In the case supposed, the State Courts of Arkansas, might not indeed, overrule the decision of this Court; nor is it to be presumed that they would attempt to do so in any case. It is altogether probable they would hold the judgment in the given case to be conclusive, and that the second action of ejectment could not be maintained. But it is well known, that in many instances, reproachful though incident to our complex system, conflicts of opinion have arisen, and State Courts have persisted in adhering to rules of decision, different from those which prevail in this Court. In the case supposed, the only theory, upon which this Court, consistently with its own honor and dignity, could extenuate a flagrant attempt to bring about a reversal of its solemn judgment—in a case where under the constitution and laws, it had jurisdiction over the parties and the subject matter—by an appeal to State tribunals, would be this: that in questions of title to land depending upon local laws, the State Courts might be better qualified than the Federal Judiciary, to interpret those laws.

But that end is already attained. The State Courts in Arkansas have passed upon this controversy. The attempt to reverse their decision, by an appeal to the Federal Tribunals, whose duties are beset with jealousies, furnishes a convincing argument in support of the finality of the former judgment.

Respectfully submitted,

GEO. C. WATKINS.